

**Lewis  
Baach  
Kaufmann  
Middlemiss**  
PLLC

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 12/6/18

Ronald Abramson  
212 822 0163  
ronald.abramson@lbkmlaw.com

December 5, 2018

VIA FAX: 212-805-7942

Hon. Alvin K. Hellerstein  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: Kaufman v. Microsoft Corporation, 16-cv-2880 (AKH)

Dear Judge Hellerstein:

Plaintiff Michael Philip Kaufman ("Kaufman") and Defendant Microsoft Corporation ("Microsoft") jointly ask the Court to adjourn the upcoming settlement and status conferences scheduled for this Thursday, December 6,<sup>1</sup> and Friday, December 7, respectively. This adjournment is necessitated because the parties agree that a more productive settlement conference may be possible 1) after the resolution of ongoing issues concerning the completion of fact discovery, which had been ordered to conclude by November 16; and 2) by the participation in those discussions, after resolution of the outstanding fact discovery issues discussed below, by certain of Kaufman's retained experts, who have a conflict on December 6.

The outstanding fact discovery issues concern (i) certain "telemetry" data regarding usage of certain menu options in an alleged infringing product, which Kaufman contends bear on damages, and which Microsoft has acknowledged became unavailable during the pendency of this case,<sup>2</sup> and (ii) the further development that Microsoft's counsel recently advised Kaufman's counsel that it discovered an unprocessed set of approximately 100,000 pages of Microsoft documents potentially responsive to Kaufman's document requests, which Microsoft has not yet produced, but will produce by December 17.

Kaufman currently intends to move for a limited extension of fact discovery as to the latter issue (belated production) and reserves all rights regarding any additional relief on both

<sup>1</sup> The court-ordered settlement conference at Kaufman's attorneys' office was originally ordered to take place on November 29. To coincide with Microsoft's travel to NYC for the Status Conference on December 7, Kaufman agreed to Microsoft's request to move the settlement conference to December 6, 2018.

<sup>2</sup> Microsoft has been searching for the telemetry data in alternate locations since at least November 15, but as of today's date has been unable to find such data.

*A status conf. will be held Dec. 14, 2018, 10<sup>00</sup> a.m. The parties shall reconvene first, now adjournable date for all steps leading to the conclusion of fact discovery.*  
12.6.18  
*Alvin K. Hellerstein*

**Lewis  
Baach  
Kaufmann  
Middlemiss**  
PLLC

Hon. Alvin K. Hellerstein  
December 5, 2018  
Page 2

issues.<sup>3</sup> However, the parties continue to meet and confer regarding a mutual agreement on these issues.

In view of these developments, the parties contemplate:

- (a) for Microsoft to produce the new set of responsive documents to Kaufman no later than December 17,
- (b) for Kaufman to review Microsoft's new production and ascertain the scope of additional fact discovery necessitated thereby, and
- (c) for the parties to meet and confer and propose dates for completion of such additional fact discovery, new dates for settlement and status conferences, and any motions to be made concerning discovery issues.

Upon Kaufman's review of Microsoft's additional production, the parties propose to submit a further joint letter updating the Court on the status of these issues; what, if any, relief Kaufman intends to seek; and to propose new dates for the settlement and status conferences. Based on the December 17 date that Microsoft has proposed completion of its further production, the parties believe they can submit this further joint letter by December 28.

We thank the Court for considering the above.

Respectfully submitted,



Ronald Abramson

cc: Counsel of Record (via email)

---

<sup>3</sup> Unrelated to production issues (i) and (ii), Microsoft agreed that Mr. Kaufman may take the deposition of its employee, Shane Groff after the close of fact discovery relating to a declaration he produced on October 29.